

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:23-cv-10511-WGY
4 Vol 1, Pages 1 - 94

5
6 UNITED STATES OF AMERICA, et al,
7 Plaintiffs

8 vs.

9
10 JETBLUE AIRWAYS CORPORATION, et al,
11 Defendants

12 *****

13
14 For Bench Trial Before:
15 Judge William G. Young

16
17 United States District Court
18 District of Massachusetts (Boston)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Monday, November 6, 2023

22 *****

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24 Official Court Reporter
25 United States District Court
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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ROBIN HAYES (Continued.)

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning. If you would remind the
4 witness.

5 THE CLERK: I'd like to remind you, sir, that you
6 are still under oath.

7 Do you understand?

8 THE WITNESS: I do, yes.

9 MR. DUFFY: Thank you.

10 THE COURT: Mr. Duffy, you may continue.

11 MR. DUFFY: All right. Thank you, your Honor.

12

13 DIRECT EXAMINATION BY MR. DUFFY: (Continued.)

14 Q. How are do you doing this morning, Mr. Hayes?

15 A. I'd doing well. Thank you for asking.

16 Q. You had a good weekend, I trust?

17 A. Yes.

18 Q. Busy?

19 A. Yes.

20 Q. Okay. On Friday when we broke, um, we were
21 talking about JetBlue's business in 2019 and 2020. I
22 want to jump ahead in time a little bit and talk about
23 the events that are leading up to JetBlue's proposed
24 acquisitions here. Okay?

25 A. Yes.

1 Q. All right. If you would turn please, Mr. Hayes,
2 to Exhibit 615 in your binder. There's two binders
3 there and I think it's the larger one with some numbers.
4 And this is already in evidence.

5 A. (Turns.)

6 Q. And just let me know when you're there, Mr. Hayes.

7 A. (Looks.) Yes, I have it. Thank you.

8 Q. All right. So this is an e-mail that you received
9 on June 13, 2021 from Stephen Kennington of JetBlue,
10 right?

11 A. Um, yes.

12 Q. And there is an attachment to this e-mail, the
13 file name of which is "JetBlue Board of Directors,
14 Strategic Offsite Evolution to a Travel Company,
15 Competitive Assessment Primer," right?

16 A. Yes.

17 Q. And you personally reviewed the Competitive
18 Assessment Primer before it was presented to JetBlue's
19 board of directors, right?

20 A. I would have viewed it, yes.

21 Q. Okay. And you viewed it multiple times in fact,
22 Mr. Hayes?

23 A. Um, yeah.

24 Q. Okay. And the attachment here is the final
25 version that was presented to JetBlue's board, right?

1 A. Yes.

2 Q. And so this is the summer of 2021 and at that time
3 JetBlue, like all airlines, was trying to return to some
4 sense of normalcy after the covid pandemic started,
5 right?

6 A. Yes, that's right.

7 Q. And if you would turn please to the page with the
8 Bates label ending in 879. The Bates label is the
9 number in the bottom right-hand corner, Mr. Hayes. And
10 let me know when you're there.

11 A. (Turns.) Yes.

12 Q. Okay. And this is identifying different types to
13 of carriers in the U.S. airline industry, right?

14 A. That's right.

15 Q. And so you'll see here JetBlue is identified,
16 along with Alaska Airlines, as a value-focused carrier,
17 right?

18 A. Yes.

19 Q. And those are airlines that have a revenue premium
20 over low-cost carriers like Southwest, right?

21 A. Um, that's how we described it at the time.

22 Q. And ultra-low-cost carriers are also identified on
23 this page, right?

24 A. Yes.

25 Q. And Spirit and Frontier are the two examples given

1 of ultra-low-cost carriers, right?

2 A. Yes.

3 Q. And this describes some of the business
4 characteristics of the different type of carriers,
5 right?

6 A. Yes.

7 Q. All right. Now this Competitive Assessment Primer
8 also includes some analysis of possible combinations of
9 airlines, right?

10 A. Um -- yes.

11 Q. And I can direct you to the page ending Bates
12 label 903.

13 A. 903.

14 Q. And I will caution you, Mr. Hayes, there are --
15 there's one small redaction on this page. Let me know
16 when you're there and I'll let you know.

17 A. (Turns.) Oh, Yeah, I see the redaction on the
18 screen and this is it.

19 Q. Okay, you see it on the screen?

20 A. Yeah.

21 Q. Okay. So if you can avoid saying the name of the
22 airline that's redacted, your counsel would appreciate
23 you doing that. Okay?

24 A. I'll do my best, counsel.

25 Q. All right. So this is identifying possible

1 combinations of airlines that JetBlue is evaluating at
2 this time, right?

3 A. Well it was a combination of ones that we were
4 evaluating and other potential combinations that could
5 have occurred.

6 Q. Right. So, for example, the very top row of this
7 chart is showing a possible combination of Frontier and
8 Spirit, right?

9 A. Yes.

10 Q. And also right below that there's a possible
11 combination of Alaska and JetBlue, correct?

12 A. Um, yes, that's right.

13 Q. And you can see there's different columns to the
14 right of the airline names, the first being "Strategic
15 Rationale," do you see that?

16 A. Yes.

17 Q. And there's a green pie chart for both the
18 Frontier, Spirit, and the Alaska, JetBlue combinations,
19 right?

20 A. Yes.

21 Q. Now Frontier and Spirit are both ULCCs obviously,
22 right, Mr. Hayes?

23 A. They are.

24 Q. And you'd agree Frontier's network is primarily in
25 the Western United States, right?

1 A. More so, yeah. They also fly significant amounts
2 to Florida.

3 Q. And Spirit is more of an East Coast-based ULCC,
4 right?

5 A. Um, again historically and they may have been
6 going to Las Vegas on the West more.

7 Q. And similarly would you agree that Alaska's
8 operations are much more focused on the West Coast?

9 A. Yes, I do.

10 Q. Whereas JetBlue's are generally more focused in
11 the East, right?

12 A. Well we do have a focus city in Los Angeles and
13 about a third of our capacity is West Coast to East
14 Coast, but I would agree that we are more centric on the
15 East Coast than Alaska is.

16 Q. Okay. And those two particular combinations are
17 the only two with the strategic rationale indicated in
18 green, right?

19 A. Um, yes, when this was put together.

20 Q. And you would agree that the green is reflective
21 of a more compelling strategic rationale than yellow or
22 red, right, Mr. Hayes?

23 A. You know I would say, you know, the distinction
24 between yellow and green is often, you could go either
25 way on it. But at the time, you know, there was -- two

1 were green and the rest were yellow. Yellow in my mind
2 means it certainly makes sense and there's a rationale
3 for some of those transactions to take place or they
4 would have been red.

5 Q. Okay. Now looking further down -- and I'll also
6 note that the "Regulatory Concerns" column for both
7 Frontier, Spirit and Alaska, JetBlue is yellow, correct?

8 A. I'm sorry, would you repeat the question?

9 Q. Yes. So the Frontier, Spirit and Alaska, JetBlue
10 combinations, the Regulatory Concern is a yellow pie
11 chart, right?

12 A. Um, yes.

13 Q. And would you agree that in JetBlue's opinion that
14 was indicative of a more moderate regulatory concern?

15 A. Um, you know at the time that was the, um, you
16 know one of the analyses. I would say that when we got
17 into this transaction last year, you know our view is
18 both Frontier and Spirit and JetBlue, Spirit had a
19 similar regulatory profile.

20 Q. Okay. At this point in time, in June of 2021,
21 there is a different regulatory concern color for the
22 JetBlue, Spirit combination than the Frontier, Spirit
23 combination, right?

24 A. Yes. So I think you have to be mindful that this
25 was put together with sort of the strategy executive

1 without sort of an antitrust background, and obviously
2 once we started getting into this, um, transaction, then
3 we got proper counsel and advice.

4 Q. Right, so this was JetBlue's ordinary course
5 evaluation of the regulatory risk associated with
6 different transactions, correct?

7 A. At the time that was the snapshot, yes.

8 Q. All right. And you would agree that the red pie
9 chart is associated with significant regulatory
10 concerns, right?

11 A. Yes, a higher regulatory concern.

12 Q. Right. And so the bottom two rows, a legacy
13 JetBlue combination and a JetBlue, Spirit combination,
14 both entail a higher cost, higher-fare airline,
15 acquiring a lower-cost lower-fare airline, correct?

16 A. Um, yes, that was the, um -- that, you know, as a
17 general, um, lowest-cost carriers have an higher average
18 fare than the ultra-low-cost carriers.

19 Q. Right. And the transaction at issue in this case
20 is involving a higher-cost higher-fare airline acquiring
21 a lower-cost lower-fare airline, right?

22 A. A higher-average-fare airline buying a
23 lower-average-fare airline, yes. And our unit costs are
24 higher than Spirit.

25 Q. All right. Mr. Hayes, if you could turn back to

1 the Bates label ending in 876, it's a bit forward in
2 this document.

3 A. 876?

4 Q. Yes.

5 A. (Turns.)

6 Q. And let me know when you're there, Mr. Hayes?

7 A. Yup.

8 Q. And I'm going to direct to the, um -- there's a
9 heading in the bottom right, and there's no redactions
10 on this page. On the bottom right there's a heading
11 "Optimize Capital Allocation." Do you see that?

12 A. Yes.

13 Q. And this is talking in more depth about a possible
14 Spirit, Frontier combination, right?

15 A. Yes.

16 Q. And I want to direct you to the second sentence
17 which says, "More specifically, Spirit and Frontier have
18 many synergies and voracious growth appetites. A merger
19 between the two would introduce new margin pressures and
20 possibly lower our market position even further."

21 Did I read that correctly, Mr. Hayes?

22 A. Yes.

23 Q. And so this document included JetBlue's
24 assessments that a Spirit, Frontier merger would
25 negatively impact JetBlue's margins, correct?

1 A. Yes, it was possible.

2 Q. And this document was presented to JetBlue's board
3 of directors in June of 2021, right?

4 A. Yes.

5 Q. And moving forward a little bit, Mr. Hayes, in
6 February of 2022, Spirit and Frontier did in fact sign a
7 merger agreement, right?

8 A. Yes, they did.

9 Q. All right. And if I can direct you to another
10 document in the binder, Mr. Hayes, it would be Exhibit
11 24, which is already in evidence.

12 A. (Turns.) 24?

13 Q. 24. Yes.

14 A. (Turns.) Okay, thank you.

15 Q. So this is a copy of JetBlue's 10K for the 2021
16 year that was filed with the SEC in February of 2022,
17 right?

18 A. Would you mind expanding it so I can just confirm
19 the date?

20 MR. DUFFY: Yeah, if we can just zoom in a bit. I
21 apologize.

22 A. (Looks.) All right.

23 Q. If you look there you'll see there at the top for
24 the fiscal year ended December 31st, 2021. Do you see
25 that?

1 A. Yes, I see that.

2 Q. Okay. And JetBlue strives to be truthful and
3 accurate in its SEC filings, right, Mr. Hayes?

4 A. Of course, yes.

5 Q. And to appropriately disclose risks of the
6 company, right?

7 A. Yes, I would say these documents overly disclose
8 risks.

9 Q. Okay. But you disclose the risk that you believe
10 you're required to disclose, right, Mr. Hayes?

11 A. Um, yes.

12 Q. Okay. If you would turn to Page 21 of the
13 documents?

14 A. Could you just tell me the Bates number?

15 Q. 21 in the bottom middle and the Bates number ends
16 in 79.

17 A. Thank you. (Turns.)

18 Q. Let me know when you're there, Mr. Hayes?

19 A. Okay, I'm there.

20 Q. Okay. So you see there's a paragraph that says
21 "We operate in a competitive industry," the header, do
22 you see that?

23 A. I do.

24 Q. Okay. It is true that JetBlue, in its 10K filing,
25 recognized that a Spirit, Frontier merger may affect

1 JetBlue's competitiveness, right?

2 A. Just give me a second to read it.

3 Q. Sure, it's the second paragraph on the screen.

4 A. (Reads.) Yes, thank you.

5 Q. But you agree with that statement, Mr. Hayes?

6 A. Well the statement is here and it -- you know it
7 might affect our competitiveness.

8 Q. Right. So JetBlue is recognizing that increased
9 competition from ULCCs was a threat to its
10 profitability, right?

11 A. It could have been.

12 Q. Okay. All right. And after learning of
13 Frontier's bid --

14 MR. DUFFY: And we can take the 10K down.

15 Q. After learning of Frontier's bid, you had
16 discussions with JetBlue's board about making a
17 competing bid to Spirit, right?

18 A. Well let me finish --

19 Q. Yes, go ahead.

20 A. I'm just trying to stay organized here. I'm
21 sorry?

22 Q. Sure, let me reask the question.

23 After learning of Frontier's bids to acquire
24 Spirit, you had discussions with JetBlue's board about
25 making a competing bid to Spirit, right?

1 A. We did.

2 Q. And you then had a discussion with Mr. Christie of
3 Spirit about that possibility, right?

4 A. Yes.

5 Q. And JetBlue's first offer to Spirit was an
6 all-cash offer, correct?

7 A. Yes.

8 Q. There was no stock component, it was strictly
9 paying the shareholders cash, right?

10 A. That is correct.

11 Q. And Spirit's management rejected that offer,
12 right, Mr. Hayes?

13 A. They did initially reject it.

14 Q. And that was because Spirit management concluded a
15 JetBlue, Spirit combination was not reasonably capable
16 of being consummated, right?

17 MR. SHORES: Objection, your Honor.

18 THE COURT: Yes, sustained. You're asking him to
19 what they thought, and they made communications. I'm
20 going to sustain that.

21 MR. DUFFY: All right. I'll move on, your Honor.

22 Q. So in May of 2022, JetBlue made a hostile offer to
23 Spirit's shareholders, right?

24 A. I would use the word "competing."

25 Q. "Competing." And without the, um, approval of

1 Spirit's board, right?

2 A. Yes, I mean for us to make an offer, it would need
3 to be reported to the entire board.

4 Q. Right. Got it. And you decided to make the case
5 directly to the Spirit shareholders after the Spirit
6 management had rejected the initial JetBlue bid, right?

7 A. Um, well the lack of -- yes, I mean there was a
8 leak, and so our bid became public. So at that point it
9 was, you know, not just about communications between us
10 and the Spirit board.

11 Q. And you believed that structuring the deal as an
12 all-cash offer would make JetBlue's proposal more
13 attractive to Spirit's shareholders than Frontier's
14 equity-based offer, right?

15 A. Well there were two benefits. One, we thought it
16 was a stronger offer for the Spirit shareholders, and
17 also, you know, an all-cash deal is usually also more
18 accretive for your own shareholders.

19 Q. Okay. And --

20 THE COURT: Hopefully more "accretive"?

21 THE WITNESS: Yes.

22 THE COURT: What does that mean?

23 THE WITNESS: Well that means, your Honor, if we
24 are bidding cash for another company, um, then we get to
25 keep all the higher profits that that new larger company

1 would make, they would go to our shareholders. Whereas
2 if you said that 30 percent of the new company is going
3 to be to the shareholders of the old company, then your
4 own shareholders only really have 70 percent of that
5 margin.

6 THE COURT: Got it. Thank you.

7 Q. And during the spring and summer of 2022, you were
8 personally making public appearances encouraging Spirit
9 shareholders to reject the Frontier bid, right?

10 A. I was.

11 Q. And instead encouraging them to accept the JetBlue
12 bid, right?

13 A. Yes.

14 Q. And you were ultimately successful in those
15 efforts, right, Mr. Hayes?

16 A. We were.

17 Q. Right. So by early July of 2022, you understood
18 that Spirit shareholders would not approve the Frontier
19 bid, right?

20 A. Yes.

21 Q. Okay. And ultimately Spirit management signed an
22 agreement with JetBlue, right?

23 A. Yes.

24 Q. And so under the terms of the agreement that was
25 approved by both parties' management, Spirit's

1 shareholders would receive \$43.50 per share, correct?

2 A. Yes.

3 Q. All right. And that reflects an over-50-percent
4 premium over the price where Spirit's shares were
5 trading right before the Frontier bid, right?

6 A. That's about right.

7 Q. Okay. And Spirit's shareholders in fact have
8 already today received \$2.50 per share as a prepayment,
9 right?

10 A. Um, they've actually received more than that.

11 Q. More than that?

12 A. Yes.

13 Q. Okay, how much have they received, Mr. Hayes?

14 A. They received the \$2.50 -- so they received the
15 \$2.50 per share prepayment that you identified. In
16 addition we've been paying a ticking fee which for
17 members is 10 cents a month, from the 1st of January, to
18 the shareholders that were on the Spirit shareholder
19 register at that time. It may be a different group.
20 But to the group that originally benefited if they sold
21 the shares. But -- and that gets deducted from the
22 offer price of \$33.50 if this deal is closed.

23 Q. Right. And in addition to that \$33.50 price, um,
24 if the deal is not consummated for regulatory reasons,
25 JetBlue will pay Spirit \$70 million, correct?

1 A. Um, yes, which mirrors the commitment they had
2 from Frontier in their agreement.

3 Q. And furthermore JetBlue will also pay Spirit's
4 shareholders \$400 million, right?

5 A. Well that's, um, that's the 250, and then the
6 ticking fee that I just talked about.

7 Q. Right. So the \$2.50 per share that is prepaid and
8 Spirit's shareholders will keep that regardless of
9 whether or not the deal ultimately goes through?

10 A. And the ticking fee that's been paid, they keep.

11 Q. Okay. Now given that this deal is all cash,
12 Mr. Hayes, it is true that JetBlue will need to take out
13 over \$3.5 billion in debt to pay Spirit's shareholders,
14 right?

15 A. Um, yes.

16 Q. And JetBlue retained Goldman Sachs to provide
17 financial advice for the deal, right?

18 A. That's correct, yes.

19 Q. All right. And one of the things that Goldman
20 Sachs did was to provide a fairness opinion, right?

21 A. They did, yes.

22 Q. And if you would turn please to Exhibit 437 in
23 your binder, um, and this is already in evidence, and
24 let me know when you've managed to get there.

25 THE COURT: Where do you want him to go?

1 MR. DUFFY: 437. Exhibit 437.

2 A. (Turns.) Okay. Thank you.

3 Q. Looks like you've got it. And the first page is
4 just a redacted e-mail cover page.

5 A. Uh-huh.

6 Q. The second page is a letter. And then the actual
7 opinion starts at Page 3 of the document. Do you see
8 that? It's the Bates ending in 388.

9 A. Yes.

10 Q. All right. Now, Mr. Hayes, the purpose of a
11 fairness opinion is to give the board of directors
12 comfort that they're paying a fair price, right?

13 A. Yes.

14 Q. And JetBlue provided certain information to
15 Goldman Sachs in connection with its preparation of this
16 fairness opinion, right?

17 A. Yes.

18 Q. And JetBlue knew that Goldman Sachs would rely on
19 that information, right?

20 A. Yes.

21 Q. And in fact if you go to Page 3 of the opinion, so
22 turning to the Bates label ending in 390, looking at
23 kind of the third line of the document, the first full
24 paragraph, the fairness opinion states "For purposes of
25 rendering this opinion, we have, with your consent,

1 relied upon and assumed the accuracy and completeness of
2 all of the financial, legal, regulatory tax accounting,
3 and other information provided to, discussed with, or
4 reviewed by us, without assuming any responsibility for
5 independent verification thereof."

6 Do you see that, Mr. Hayes?

7 A. I do.

8 Q. And then it goes on in the next sentence to say,
9 "In that regard we have assumed, with your consent, that
10 the forecasts and the synergies have been reasonably
11 prepared on a basis reflecting the best currently
12 available estimates and judgments of the management of
13 the company."

14 Do you see that, Mr. Hayes?

15 A. Yes.

16 Q. And the company here being JetBlue, right?

17 A. Yes.

18 Q. So JetBlue provided Goldman with an estimate of
19 the transaction synergies associated with this
20 acquisition, right?

21 A. Yes.

22 Q. In other words JetBlue provided Goldman Sachs with
23 an estimate of how much additional earnings JetBlue
24 expected to make as a result of the transaction, right?

25 A. Yes.

1 Q. And would you agree Mr. Friedman was very much
2 involved in the preparation of the synergies work that
3 was provided to Goldman Sachs?

4 A. Um, Eric Friedman of JetBlue? Yes.

5 Q. Okay.

6 MR. DUFFY: And if we can quickly go to Slide 7 of
7 the attachment, which is the Bates label ending in 398.

8 A. (Turns.)

9 Q. And I just want to quickly ask you, Mr. Hayes,
10 that this is showing the anticipated cost and revenue
11 synergies associated with the acquisition, right?

12 A. Yes.

13 Q. And Mr. Friedman will be able to speak to the
14 synergies later, but I'm going to ask you about the cost
15 information at the bottom of this chart, Mr. Hayes.

16 A. Yes.

17 Q. "It is true that the proposed acquisition would
18 not result in total cost synergies, right, it would
19 instead result in negative cost dissynergies," correct?

20 A. Yes.

21 Q. In fact the negative cost dissynergies will be
22 \$440 million per year, right?

23 A. That was the analysis at the time.

24 Q. Right. So it is true that if this acquisition
25 goes through, costs will increase rather than decrease,

1 right?

2 A. They will increase, although it is my opinion that
3 the net cost of synergy number is lower now because of
4 the significant, um, adjustments in compensation at
5 Spirit for things like -- for people like pilots which
6 has brought the cost-of-synergy number down.

7 Q. Okay. You can put this document to the side,
8 Mr. Hayes.

9 Is it true that if this acquisition goes through,
10 JetBlue's indebtedness will be substantially greater
11 than it would be without the deal, right?

12 A. Yes.

13 Q. Okay. And if you could turn please to Exhibit 59
14 in your binder. And I'll just warn you, this is another
15 10K, it's a lengthy document.

16 A. 59? (Turns.) Would it be in this binder?

17 Q. It's the same binder we've been looking in with
18 the exhibits, Mr. Hayes.

19 A. 59?

20 Q. 59, yes.

21 A. I don't see it. I've got 2, 364 --

22 THE COURT: The second exhibit in this pile. The
23 second there.

24 Q. And we can bring one up for some reason.

25 A. No, I got it. I hadn't put the other ones back in

1 the binder yet.

2 Q. Yeah, there's a lot of paper in this case. I
3 understand completely.

4 So let me know when you're ready?

5 A. Yeah, would you mind expanding it on the screen?

6 MR. DUFFY: Yes, but just show the top for now.
7 Thank you.

8 Q. All right. So, Mr. Hayes, this is the most recent
9 10K filing with JetBlue, right?

10 A. Um, 31 December '22? Yes.

11 Q. So this was filed earlier this year, um, and
12 discussed in the 2022 year, right?

13 A. Yes.

14 Q. Okay. If you can turn please to Page 28 of the
15 document.

16 A. (Turns.)

17 Q. And the Bates label is ending in 88.

18 A. (Looks.) 88. No, 988. Yes, okay.

19 Q. All right?

20 A. Yes.

21 Q. So below the bold heading there's a statement that
22 says "In order to consummate the merger, we expect to
23 incur acquisition-related debt financing of up to \$3.5
24 billion and we will assume Spirit's indebtedness
25 outstanding at closing."

1 Do you see that, Mr. Hayes?

2 A. Yes.

3 Q. And Spirit's indebtedness is approximately \$4
4 billion?

5 A. Um, I'm not familiar with exactly the count
6 number.

7 Q. All right. Regardless JetBlue will be taking on
8 both Spirit's current debt and the \$3.5 billion needed
9 to pay Spirit's shareholders, right?

10 A. Yes, that's true.

11 Q. And JetBlue went on to say that "This
12 substantially-increased indebtedness may impact, among
13 other things, its flexibility to respond to changing
14 business and economic conditions." Correct?

15 A. Yes.

16 Q. Okay. And two sentences later JetBlue, says, "The
17 increased indebtedness could also reduce funds available
18 to engage in investments in our business development,
19 capital expenditures, and other activities, and may
20 create competitive disadvantages relative to other
21 companies with lower debt levels," correct, Mr. Hayes?

22 A. Yes.

23 Q. And you'd agree JetBlue's got a real substantial
24 increase as a result of this deal, correct?

25 A. It would, yes.

1 Q. And in part that's because JetBlue structured this
2 as an all-cash offer to buy Spirit, right?

3 A. Yes.

4 Q. Okay. And you'd agree, once the shareholders are
5 paid, that \$3.5 billion is no longer available to the
6 company, right?

7 A. Well the money is debt financing, right, so you
8 only get it if you need it.

9 Q. And you would agree that given the Spirit
10 acquisition, JetBlue has no upward movement on its
11 nonaircraft capital expenditures budget, correct?

12 A. You know that's been true for years. For as long
13 as I remember doing annual budgets at JetBlue, we've
14 maintained a nonaircraft cap x number at about 150
15 million.

16 Q. All right. You believe it will be imprudent for
17 JetBlue to currently make additional capital
18 expenditures given the cash needed to pay for the
19 transaction, right, Mr. Hayes?

20 A. Could you repeat the question?

21 Q. Sure.

22 You believe it would not be prudent for JetBlue to
23 make additional capital expenditures given the cash
24 needed to pay for the transaction?

25 MR. DUFFY: Sorry, we can put this document down.

1 A. Yeah, I'm not sure I would agree with that.

2 Q. You don't agree with that statement?

3 A. Not as a blanket statement, no.

4 Q. Okay. It is true that JetBlue's plan for
5 acquiring additional aircraft would be different if this
6 acquisition goes through, correct?

7 A. Um, I'm not -- could you clarify the question for
8 me? Sorry.

9 Q. Sir, would you agree that --

10 THE COURT: I understand it.

11 So if this merger goes through, your plan for
12 acquiring additional aircraft will be different?

13 A. Well we have an order book today and Spirit has an
14 order book today and both would become the obligation
15 for the new company. If the Spirit transaction was not
16 in front of us, then we still have an order book of
17 aircraft and we would have to come to a determination
18 whether we would want to order additional airplanes on
19 top of that.

20 Q. Very good, Mr. Hayes. And you characterized that
21 order book just now as an "obligation," Mr. Hayes?

22 A. Well an obligation in that you have a contractual
23 commitment to take airplanes and pay for them.

24 Q. And, um, Spirit --

25 THE COURT: Excuse me. I am curious about this.

1 I take it that the delivery date -- you have some
2 flexibility even under your contract to the -- as to the
3 delivery dates of aircraft?

4 THE WITNESS: It depends. You may get a limited
5 amount of flexibility with a certain number of
6 airplanes, but certainly nowhere near the for-order
7 book. And it would depend on what you could negotiate
8 at the time.

9 THE COURT: And I also infer -- see if you can
10 answer this, that these types of clauses are standard in
11 the aircraft industry across the industry, is that
12 right, in buying aircraft?

13 THE WITNESS: Yes, what happens is you would
14 normally commit to, um, buying a certain number of
15 aircraft per year. As you get closer to that period,
16 the manufacturer would tell you what part of that year
17 is coming. And then you may -- and I don't know because
18 I don't know everyone's contracts, you may get the
19 ability to defer or push out a certain number of those
20 deliveries. But certainly by no means not all of them.

21 But the bit issue right now, your Honor, is that
22 all of these airplanes are massively delayed anyway
23 because of supply chain and engine constraints. So
24 we're all getting them a lot later than we would have
25 liked for and what they were contractually committed to

1 in the first place.

2 THE COURT: So the problem's on the other side, on
3 the manufacturer's side in meeting whatever the contract
4 requirements are, and it's your opinion that that's true
5 across the industry, is that right?

6 THE WITNESS: Yes, your Honor. If you speak to
7 any airline CEO, it would be in the -- if not their
8 first biggest issue, their second biggest issue in terms
9 of getting ahold of airplanes.

10 THE COURT: All right.

11 Q. And if I can ask you, Mr. Hayes, a follow-up
12 question to what was just posed by the Court.

13 As of June, um, it was your understanding that
14 JetBlue would not be able to acquire additional aircraft
15 from Airbus directly until 2029. Today what is your
16 understanding as to the earliest JetBlue could get an
17 additional aircraft from Airbus?

18 A. Directly from Airbus?

19 Q. Yes.

20 A. I would say 2029, if not now 2030.

21 Q. Okay. And would you agree that from a lessor
22 JetBlue would not be able to get an aircraft until 2027?

23 A. I'm not sure because there are a lot more lessors
24 out there than there are manufacturers and they all have
25 different positions. So it's possible you could get an

1 airplane earlier than 2029. It's possible you could get
2 an airplane in 2027. But, you know, I'm not familiar
3 with their latest positions.

4 Q. Okay. And I want to ask you also about the notion
5 of options. And it's true that in addition to a firm
6 order book, which is committed orders, airlines often
7 have the option to purchase additional aircraft from the
8 manufacturer, right?

9 A. Yes, in some cases that's the case.

10 Q. All right. So Spirit, for example, has options to
11 purchase additional aircraft from Airbus, right?

12 MR. SHORES: Objection, your Honor.

13 THE COURT: Well, um, we'll see if he knows.

14 MR. DUFFY: Sure. I'm happy to lay a foundation
15 for this, your Honor.

16 THE COURT: All right.

17 Q. Back in November you personally learned that
18 Spirit was interested in acquiring additional aircraft,
19 right?

20 A. Yes.

21 Q. And Ms. Hurley, the CFO of JetBlue, told you that
22 Spirit was looking to convert some of its options to
23 acquire additional Airbus aircraft, right?

24 A. Um, I knew from someone. I'm assuming -- I'm not
25 100 percent sure it was her, but I was made aware.

1 Q. Right. And it was your understanding that based
2 on the terms of the acquisition agreement, Spirit would
3 actually have to ask JetBlue for permission to go out
4 and exercise those options, right?

5 A. Yes.

6 THE COURT: I'm lost as to what agreement governs.
7 Under the terms of the merger agreement?

8 MR. DUFFY: Yes, your Honor, that's my question.

9 THE COURT: All right.

10 A. Yeah, so in the merger agreement we signed with
11 Spirit it laid out a number of interim operating
12 covenants where Spirit would have to approach us for
13 approval and that was one of them.

14 Q. All right. And you and Ms. Hurley decided that
15 Spirit should be instructed not to exercise those
16 options at that point in time, correct?

17 A. I'm sorry?

18 Q. Sure.

19 In November of last year, you and Ms. Hurley
20 decided to tell Spirit that they should not exercise
21 those options at that point in time?

22 A. I had no conversation with Spirit about that.

23 Q. And I'm not asking about a conversation with
24 Spirit, I'm asking about a conversation you had with
25 Ms. Hurley about whether someone at JetBlue telling

1 Spirit that they should not exercise the options at that
2 time.

3 A. My recollection of what happened is Ursula was
4 made aware of it, she had a concern about it. I don't
5 ever specifically remember saying that I would deny the
6 request. And to my recollection a formal request was
7 never made. And since then of course -- I think it's a
8 moot point because since then Spirit, of its own accord,
9 have deferred airplanes in a fairly significant way.

10 THE COURT: So I'm clear, Ursula Hurley is?

11 THE WITNESS: Ursula Hurley, your Honor, is
12 JetBlue's Chief Financial Officer and she'll be coming
13 here soon, I believe.

14 THE COURT: Okay.

15 Q. Let me just ask you a clarification, Mr. Hayes.

16 A. Yes.

17 Q. Was it your understanding that -- was it your
18 intention, um, that Spirit should not exercise the
19 options until they came here -- until the deadline
20 approached?

21 A. Well again I don't remember a formal request ever
22 being made. I will tell you that every time a request
23 from Spirit to -- under the interim operating covenants
24 was brought to me, I approved it.

25 Q. All right. I want to ask you a few, um, just very

1 quick background questions.

2 MR. DUFFY: If we can approach, your Honor, just
3 with a copy of JetBlue's recent 10Q from this quarter.

4 THE COURT: Okay.

5 Q. I'll just ask you a quick question, Mr. Hayes.
6 I'm sorry, the third quarter of 2023 10Q.

7 A. (Looks.) It's not in the binder.

8 Q. Yeah, we're going to bring it up, Mr. Hayes.

9 A. Oh, okay.

10 Q. And the exhibit, um, letter for this is BUN.

11 (Hands.)

12 Q. And this is a copy of JetBlue's 10Q, the most
13 recent one, Mr. Hayes?

14 A. Yes, it is.

15 Q. Okay. And I just want to ask you two quick
16 questions.

17 A. Uh-huh.

18 Q. On Page 28, there's some data in the chart.

19 A. (Turns.)

20 Q. Let me know when you're there?

21 A. Yes.

22 Q. This is including load factor statistics, among
23 some others, right, Mr. Hayes?

24 MR. SHORES: Objection, your Honor, I'm not even
25 sure what's the inner parts here?

1 THE COURT: Nor am I and the document is not in
2 evidence.

3 MR. DUFFY: Well I'm happy to lay a further
4 foundation, your Honor.

5 THE COURT: Well he's authenticated it. It's
6 authentic. But like Mr. Shores, I'm not clear where
7 you're looking.

8 MR. DUFFY: Sure. It is Page 28. I'm looking at
9 the middle.

10 THE COURT: Okay. (Looks.)

11 And your question?

12 Q. My question, Mr. Hayes, is whether the load factor
13 for the last quarter, the third quarter of this year for
14 JetBlue, was 85.1 percent?

15 A. Um, yes, it was.

16 Q. And you believe that the 85.1 percent load factor
17 is accurately reflected in the 10Q?

18 A. I do.

19 Q. And that is a reduction from the third quarter of
20 2022, right?

21 A. It is.

22 Q. Okay. And if you would also please, Mr. Hayes,
23 just turn quickly to Page 30.

24 A. (Turns.)

25 Q. And this includes the load factor for the year to

1 date of 2023, right, through September 30th?

2 A. It does.

3 Q. And the load factor there is 83.4 percent, right?

4 A. Yes.

5 Q. Okay.

6 MR. DUFFY: And we would move this in evidence as
7 677.

8 THE COURT: No objection?

9 MR. SHORES: No objection, your Honor.

10 THE COURT: It may be admitted, Exhibit 674 in
11 evidence.

12 MR. DUFFY: 677, your Honor.

13 THE COURT: The Clerk is the master of the
14 exhibits.

15 (Pause.)

16 THE COURT: 677 in evidence.

17 (Exhibit 677, marked.)

18 Q. You can put that document aside, Mr. Hayes.

19 You agree, Mr. Hayes, that it is nonnegotiable
20 that after the acquisition JetBlue would become the
21 prevailing brand, right?

22 A. Um, if we -- yes, if the transaction closes
23 JetBlue will become the prevailing brand.

24 Q. In other words the JetBlue product will be put on
25 all the Spirit aircraft eventually, right?

1 A. Over time, yes.

2 Q. And that would include the seating configuration,
3 Mr. Hayes?

4 A. Yes.

5 Q. JetBlue would convert the Spirit aircraft to a,
6 um, what is called a "Layout Of Passenger
7 Accommodation," or LOPA, equivalent to the JetBlue LOPA,
8 right?

9 A. Yes.

10 Q. Okay. And that would entail the reduction of 10
11 to 15 percent of seats on each former Spirit aircraft,
12 right?

13 A. That's about right, yes.

14 Q. I want to quickly ask you some questions about the
15 "JetBlue Effect," Mr. Hayes.

16 A. Yes.

17 Q. You testified last year in this courthouse about
18 the "JetBlue Effect," right?

19 A. I did.

20 Q. And that was during the trial involving the
21 Northeast Alliance, right?

22 A. Yes.

23 Q. The JetBlue effect describes JetBlue's ability to
24 lower fares when it enters a market, right?

25 A. Yes.

1 Q. And that effect results both from JetBlue's own
2 low fares and the impact of JetBlue's competition on the
3 higher cost legacy airlines, right?

4 A. It does.

5 Q. So adding JetBlue to the mix of airlines helps
6 consumers because JetBlue's fares are lower on average,
7 right, than the legacies'?

8 A. Yes.

9 Q. And so in that case you understood that the
10 Department of Justice was bringing suit to ensure that
11 JetBlue remained a unique and disruptive force, right?

12 A. Yes.

13 Q. And you would agree that JetBlue has its own
14 unique niche in the industry, right, Mr. Hayes?

15 A. I do.

16 Q. You would agree that other airlines have also
17 developed their own unique niches in the industry,
18 right?

19 A. I think what we do is uniquely disruptive.

20 Q. Right. But you would agree that other airlines
21 have their own unique niche in the industry, wouldn't
22 you, Mr. Hayes?

23 A. Um, they perform well.

24 Q. Okay. And JetBlue is able to compete effectively
25 against legacy airlines in certain ways that other

1 low-cost carriers cannot, right?

2 A. Yes.

3 Q. And so, for example, JetBlue is uniquely able,
4 among low-cost carriers, to compete for high-margin,
5 leisure, and business travelers, right?

6 A. We really compete from, um, across the spectrum
7 from very price-sensitive customers right through to
8 business travelers.

9 Q. And you would agree that amongst the low-cost
10 carriers, JetBlue is uniquely able to compete for those
11 higher-margin travelers, right?

12 A. We compete for everybody.

13 Q. All right. I want to ask you a few final
14 questions, Mr. Hayes.

15 You believe that the legacy airlines don't really
16 compete with each other, right?

17 A. I've said that in the past.

18 Q. Okay. It's your belief that legacy airlines focus
19 more on corporate customers, right?

20 A. Yes, that certainly has been the case. I will say
21 that has started to evolve as they have pushed more
22 capacity into leisure markets.

23 Q. Right. And you also believe that legacy airlines
24 focus on obtaining higher fares, correct?

25 A. Leisure. I'm sorry.

1 Q. Legacy airlines focus on obtaining higher fares?

2 A. Yes, they have over indexed to business travelers,
3 which tend to come with a higher average fare.

4 Q. And you believe that legacy airlines also work to
5 maintain capacity levels, right?

6 A. Historically they've done that, yes.

7 Q. In other words they try to limit how much capacity
8 is being put into the market, right?

9 A. That is historically the case.

10 Q. Right. And they do that in order to keep fares
11 relatively high, correct?

12 A. Again that's how it really was precovid. I would
13 say there are signs of that changing now.

14 Q. All right.

15 Last week JetBlue gave an earnings call, correct,
16 Mr. Hayes?

17 A. Yes, it was last week.

18 Q. Last Tuesday?

19 A. Yes.

20 Q. Okay. The same day the trial started in this case
21 in fact?

22 A. Yes, we were trying to avoid that, but we were
23 unsuccessful.

24 Q. Okay. If you would turn to Exhibit 649 in your
25 binder.

1 A. (Turns.)

2 Q. Let me know when you're there, Mr. Hayes.

3 A. (Turns.)

4 Q. 649.

5 A. 649? (Turns.) Is it the same binder?

6 Q. I think it's the second from the back of that.

7 A. Oh, sorry.

8 Q. Towards the end.

9 A. Yeah.

10 Q. Got it? Let me know when you've got it?

11 A. (Turns.) Okay, thank you.

12 Q. Okay. So again this earnings call took place just
13 last week, right, Mr. Hayes?

14 A. Yes, sir.

15 Q. All right. And you personally participated in the
16 call, correct?

17 A. I did.

18 Q. And Ms. Hurley participated as well?

19 A. Yes.

20 Q. And Ms. Gerrity?

21 A. Yes.

22 Q. And Mr. Clark, right?

23 A. Yes.

24 Q. All right. And you try to be truthful and
25 accurate during those earnings calls, correct,

1 Mr. Hayes?

2 A. We do.

3 Q. And you also expect your Senior Leadership Team
4 participating to be similarly truthful and accurate,
5 right?

6 A. Yes.

7 Q. All right. Would you turn please to Slide 8,
8 which is Bates label ending in 603.

9 A. (Turns.)

10 Q. Let me know when you're there, Mr. Hayes.

11 A. I have it. Thank you.

12 Q. Okay. So during this call JetBlue indicated it
13 would take a "disciplined approach to capacity growth in
14 the fourth quarter," correct?

15 A. Yes.

16 Q. "JetBlue indicated there was excess industry
17 capacity during offpeak periods," correct?

18 A. Yes, that had been a thing with all the earnings
19 calls.

20 Q. And that excess industry capacity was driving
21 domestic fares down, right?

22 A. Um, yes, in the second half of this year, yes.

23 Q. "JetBlue announced it was reducing its scheduled
24 capacity in the fourth quarter," correct, Mr. Hayes?

25 A. Well we actually already reduced it, um, so this

1 was more the public affirmation of what had already been
2 loaded and we're selling in the schedules.

3 Q. Right, you had recently made the decision to
4 voluntarily reduce the amount of flying that JetBlue was
5 doing in the fourth quarter?

6 A. Well the word "voluntary" I think would require
7 some explanation. The federal -- the FAA had issued a,
8 um, a slot waiver for all airlines flying in and out of
9 New York and asked them to reduce flying by 10 percent.
10 This was done because of a significant air traffic
11 controller shortage in the air space, which meant they
12 could not handle all the flights. So the vast majority
13 of this capacity reduction, as it says there, was linked
14 to this slot waiver.

15 So could we have not done it? Yes. But it was
16 being made by the FAA, their expectation that all
17 airlines would partake in this slot waiver.

18 Q. Well, Mr. Hayes, looking up at this side, um, the
19 second bullet under "Expecting air traffic control
20 challenges in the Northeast to dissipate in winter,"
21 JetBlue's indicating there that the air traffic control
22 issues are expected to improve in the fourth quarter,
23 right?

24 A. Well we expect the, um, the four months to improve
25 because you do not have the weather, the convective

1 weather that you get in the summer, but the FAA staffing
2 shortages are there all year round and are likely to
3 last for a number of years. And so the FAA have
4 currently extended its slot waiver through October of
5 2024, and asked all airlines to reduce New York flying
6 by 10 percent through that period.

7 Q. And looking at the second --

8 THE COURT: Would you tell me again where you're
9 having him look? I seem to be --

10 MR. DUFFY: I'm sorry, it's the Bates label ending
11 in 603, your Honor.

12 THE COURT: Okay.

13 Q. And again, Mr. Hayes, the second bullets under
14 "Disciplined approach to capacity growth" says "JetBlue
15 is proactively managing capacity with a 5-point
16 sequential reduction in scheduled capacity in the fourth
17 quarter versus the third quarter," right?

18 A. Yes.

19 Q. And the title of this slide says "Moderating
20 Capacity Expected to Drive Revenue Improvement," right?

21 A. Yes.

22 Q. JetBlue is recognizing that because there was, in
23 JetBlue's opinion, too much capacity, fares were too
24 low, right?

25 A. Yeah, it was not just my opinion, there had been a

1 significant pivot to international in the summer of
2 2023, leaving a lot of domestic capacity. But if you --
3 if, you know, if you're asking what is driving this
4 capacity reduction in Q4, a significant portion of it is
5 directly linked to the government-requested slot waiver.

6 Q. All right. But at least a portion of this was
7 linked to JetBlue's voluntary decision to slow its
8 growth so that fares would increase, right, Mr. Hayes?

9 A. No, the two things that were driving that slowing
10 were the slot waiver and also aircraft delivery delays.
11 You know we were flying every aircraft we have. We have
12 6 airplanes on the ground with no engines. We have a
13 number of aircraft many months later that were due to be
14 delivered. And we're dealing with the slot waiver. So
15 that is really what has driven the reduction in capacity
16 in the 4Q. And it's going to continue into next year as
17 well.

18 Q. Under the last section here, "Health and Peak
19 Period Air Traffic Demand," the first bullet indicates
20 "Fourth quarter demand for holiday travel is healthy."

21 Do you see that, Mr. Hayes?

22 A. Yes.

23 Q. So the demand was improving in the fourth quarter,
24 right?

25 A. Well the demand for the Thanksgiving and holiday

1 period was improving. But again, even there we've had
2 to reduce flights over Thanksgiving, we've had to reduce
3 flights over the Christmas holidays, because of these
4 aircraft delivery delays and the slot-waiver
5 constraints.

6 Q. Right, the aircraft delivery delays are not
7 indicated anywhere on this slide, correct?

8 A. They're not on this slide, but you know we did
9 show them the call that we had, um, 6 aircraft grounded
10 and we expected that to increase into next year.

11 Q. Right. And JetBlue told its shareholders during
12 this call, "excess industry capacity during offpeak
13 periods is driving domestic yield pressure," right?

14 A. Well again investors knew of that because every
15 other airline had reported the same thing.

16 Q. All right.

17 MR. DUFFY: A moment to confer?

18 (Pause.)

19 MR. DUFFY: No further questions at this time,
20 your Honor.

21 Thank you, Mr. Hayes.

22 THE COURT: Mr. Shores, do you wish to examine or
23 reserve?

24 MR. SHORES: I'll examine, your Honor.

25 THE COURT: You may.

1 (Pause.)

2

3 CROSS-EXAMINATION BY MR. SHORES:

4 Q. Good morning, Mr. Hayes.

5 A. Good morning.

6 Q. Mr. Hayes, I'd like to get a little more of your
7 background.

8 You are the CEO of JetBlue, is that right, sir?

9 A. Yes, I am.

10 Q. Are you a member of JetBlue's board of directors?

11 A. I am.

12 Q. And what year did you become CEO of JetBlue?

13 A. I became CEO in 2015.

14 Q. Okay. And when did you start working at JetBlue?

15 A. I started working at JetBlue in August of 2008.

16 Q. And did you have experience in the airline
17 industry prior to coming to JetBlue?

18 A. Yes, I had previously worked another airline,
19 British Airways, for 19 years, joining in 1989.

20 Q. And can you explain to the Court the roles you
21 held prior to coming to JetBlue?

22 A. Um, yes. I actually got my start in industry
23 before British Airways, right here in Boston, selling
24 Duty Free at the airport. I then joined British
25 Airways, I performed a number of roles in airports,

1 customer service, sales, marketing, reservations, um,
2 really working may way up and through the company.
3 Eventually running Europe, outside the UK, for British
4 Airways, and then running the Americas for British
5 Airways in 2004 until 2009.

6 Q. Okay. So approximately how many years have you
7 been in the airline industry, Mr. Hayes?

8 A. Um, 35 and change.

9 Q. And do you have any leadership roles in any
10 industry association, Mr. Hayes?

11 A. Yes, I served for a number of years on the IARTA
12 Board of Governors. IARTA is the industry trade
13 association. I was the Chair of the trade association
14 for a while. And I'm currently the Chair of "A For A,"
15 which is "Airlines for America."

16 Q. Okay. All right, Mr. Hayes, in your role as CEO,
17 are you knowledgeable about the history of JetBlue?

18 A. I am.

19 Q. Okay. And when was JetBlue founded?

20 A. JetBlue was founded in 1998.

21 Q. Okay. And can you remind us, how does JetBlue
22 refer to its employees?

23 A. We are all "crew members."

24 Q. And how are "crew members" trained at JetBlue?

25 A. Every crew member who joins JetBlue, including

1 myself, back in 2008, attends orientation at JetBlue
2 University in Orlando.

3 Q. And do you yourself provide that training,
4 Mr. Hayes?

5 A. I do, yes.

6 Q. Okay.

7 MR. SHORES: Your Honor, I'd like to show or let's
8 look at Exhibit 612, which is in evidence, please.

9 (On screen.)

10 A. (Looks.)

11 Q. Mr. Hayes, are you at 612?

12 A. I am.

13 Q. Okay. And this is an e-mail from you and it has
14 an attachment, a look-back and a look-ahead module. Do
15 you see that?

16 A. Yes.

17 Q. Okay. And what is this module being referred to
18 here, Mr. Hayes?

19 A. Well, um, on your first day of JetBlue, when you
20 go through training, the first module you actually get
21 as a new crew member is this one, and we try to teach
22 the history of JetBlue and how JetBlue has uniquely
23 created a space for itself in the industry.

24 Q. Okay. And let's turn to the Bates number ending
25 in 226 of this document. It's Page 4.

1 A. (Turns.) Yes.

2 Q. Are you there, Mr. Hayes?

3 A. Yes.

4 Q. Okay. And this slide says "Founding Mission" at
5 the top. Do you see that?

6 A. I do.

7 Q. And what was JetBlue's founding mission?

8 A. Our founding mission was to bring humanity back to
9 air travel.

10 Q. And what does that mean?

11 A. Well our founders, you know, also had a long
12 history in airline industry and really for the previous
13 20 years, from '78 through to 1998, you know airlines
14 had been taking away things from people, squeezing more
15 people in their planes, taking away the food, making it
16 harder and less pleasant, and our founders wanted quite
17 a very different type of airline that put humanity at
18 its core for both customers and also crew members.

19 Q. And is that still JetBlue's mission today,
20 Mr. Hayes?

21 A. Well we did change it from "Bring humanity back to
22 air travel" to "Inspire humanity." But I will say it
23 really means the same thing.

24 Q. Okay. And let's look at 228, Bates number ending
25 in 228, which is Slide 6, please, sir.

1 A. (Looks.)

2 Q. And, Mr. Hayes, there's a reference at the top
3 here that says "Sweet spot, competitive prices and
4 customer centric." Do you see that?

5 A. Yes.

6 Q. What does "sweet spot" mean here?

7 A. Well, you know, our vision for the industry is
8 that fundamentally a customer should not have to choose
9 between a low fare and a great service. We think that
10 that is what most people want and we think that we are
11 uniquely placed to do that. And what that means and
12 what this slide is trying to show is that we're in the
13 sweet spot where we can compete with the much bigger
14 legacy airlines, but we also compete with the low-cost
15 carriers and the ultra-low-cost carriers on price as
16 well.

17 Q. And you mentioned competition with the larger
18 airlines. How does JetBlue compete with those larger
19 airlines?

20 A. Well, you know, the larger airlines have so many
21 natural advantages in terms of network and breathe and
22 you know global reach, so we have to really focus on the
23 customer experience, because that is where we can win.
24 You know when they fly JetBlue, we want them to have a
25 better experience than when they fly one of these much

1 larger airlines.

2 Q. And do you compete for all customer types against
3 these larger airlines, Mr. Hayes?

4 A. Yes, let me tell you, when I joined JetBlue, I
5 came from a legacy airline, and when I joined JetBlue I
6 was really impressed that they really were competitive
7 right across the spectrum, you know from people who were
8 paying to fly on business right through to very price-
9 sensitive customers. I mean who really wouldn't want to
10 fly JetBlue with that experience?

11 Q. And do you compete for business travelers?

12 A. Yes, we do. I mean it's a lower share of what we
13 do compared to the legacies. But we certainly have
14 business travelers on the airplane too.

15 Q. And what percentage of your customer mix is
16 business travelers, just roughly?

17 A. I would say it's around 15 to 20 percent.

18 Q. Okay. And could you just give the Court an
19 example of business travelers that fly on JetBlue?

20 A. I mean it's really everybody. I would say that we
21 focused a lot on smaller to medium-sized companies, you
22 know perhaps people that don't get access to the larger
23 corporate discounts at the legacy airlines. But we also
24 travel -- we also have some of the larger, um, companies
25 as well. In fact our largest, um, corporate contract is

1 actually the U.S. government.

2 Q. And, Mr. Hayes, you mentioned about 15 percent of
3 your customers are business travelers. Do you
4 anticipate that changing if this merger were to go
5 through?

6 A. No, um, if anything, the amount of business
7 travelers reducing a little bit as companies kind of cut
8 back. But, no, um, you know this merger is largely
9 about the leisure customer.

10 Q. Okay. And you mentioned "competition with the
11 low-cost carriers." How does JetBlue compete with
12 low-cost carriers?

13 A. Well again, you know, we focus on the low fares,
14 we focus on making sure that we're giving people great
15 value for money, but also on the benefits that we
16 provide them in terms of leg room and free WIFI and free
17 TV and all the other benefits of flying JetBlue that I
18 think people really really want.

19 Q. Okay. And let's focus, for purposes of this
20 question, on the ultra-low-cost carriers.

21 A. Yeah.

22 Q. And do you know what I mean when I say "ultra-low-
23 cost carrier," Mr. Hayes?

24 A. I do.

25 Q. And who are your ultra-low-cost carrier

1 competitors?

2 A. Spirit. Frontier. Breeze. Avelo. Sun Country.

3 But, you know, Spirit and Frontier are the largest two.

4 Q. Is Allegiant also a competitor?

5 A. Yes, Allegiant too. I'm sorry. Yes.

6 Q. Okay. And do you compete for all customer types
7 against the ULCCs?

8 A. No, you know the ULCCs, um, have a focus on a much
9 narrower-type of customer, a more price-sensitive
10 leisure customer. JetBlue competes for those, but we're
11 also competitive for other segments of customers too,
12 whether that's a family taking their kids on vacation, a
13 small medium-sized company, or people visiting relatives
14 on a trip.

15 Q. Okay. And, Mr. Hayes, this slide talks about the
16 industry landscape in 2000 and the sweet spot at that
17 time. Is JetBlue still in the sweet spot in the airline
18 industry?

19 A. Yes, I really believe we are. And in fact it's
20 unique not just in the U.S., but really globally. You
21 don't really find anyone else out there doing what we're
22 doing in terms of delivering both the low fare but also
23 what customers want.

24 Q. Okay.

25 MR. SHORES: If we could, let's go to the slide,

1 um, let's see, I apologize, in Bates number ending in
2 229.

3 A. (Looks.) Okay.

4 Q. Okay. And this slide is entitled "What Has Made
5 Us Unique." Do you see that, Mr. Hayes?

6 A. I do.

7 Q. Okay. And can you explain what this slide is
8 intended to convey to crew members with respect to what
9 has made JetBlue unique?

10 A. Yes, you know I think it's really important, when
11 someone joins us, that they understand what the secrets
12 of our success are and, you know, how we compete. And
13 so we lay out the three foundational elements here,
14 which is we want to have a better product for our
15 customers, we want to have a better culture to make sure
16 we can hire the best people, our cost structure is very
17 important because that's how we are able to continue to
18 offer low fares, and we have to focus in certain areas
19 we're such a smaller -- you know we're so much smaller
20 than the large legacy airlines. All of these things
21 mean that we can bring the JetBlue Effect, which is that
22 we, um -- because we compete for all different types of
23 customers, legacy airlines respond to our arrival in the
24 route by lowering fares.

25 In fact one of my favorite lines, when I go to a

1 new route launch and I sort of do the introduction
2 sessions to introduce JetBlue, you know I joke with
3 people that they're going to pay a lower fare now even
4 if they fly JetBlue or not, because we just brought the
5 whole fare structure down for the industry.

6 Q. Okay. And we've heard testimony about the JetBlue
7 Effect, but from your perspective as CEO, Mr. Hayes,
8 what does the "JetBlue Effect" mean?

9 A. The "JetBlue Effect" means that, um, when we come
10 into a market with lower fares, our legacy airline
11 competitors will lower their fares in response to what
12 we're doing, and given their size, right, about four of
13 them control about 80 percent of the market, the reality
14 is most people are always going to fly on a legacy
15 airline and most people are going to benefit with our
16 presence when they fly on another airline.

17 Q. Okay. And you mentioned a "differentiated
18 product," Mr. Hayes. Can you just generally describe
19 what that means?

20 A. Sure. So we anchor the JetBlue experience really
21 on three things and these are the three things that we
22 think most people want, comfort, service, and
23 entertainment.

24 Q. Okay, and we'll come back to that in just a
25 second.

1 But also, um, let's go to "Competitive Cost."

2 What does "competitive cost" mean?

3 A. Well it's very important for us to continue to
4 lower fares when we -- you know there aren't many routes
5 out there that a legacy airlines isn't flying, right,
6 they're so big and massive. And so when we grow and we
7 look to come onto a new market, we need to then lower
8 fares and also be profitable. And so this means the
9 importance of keeping our costs down, that allows us to
10 lower fares and still be profitable.

11 Q. And we've heard testimony about your costs
12 structure relative to the ultra-low-cost carriers?

13 A. Uh-huh.

14 Q. What is JetBlue's cost structure relative to the
15 legacy competitors?

16 A. Yeah, I would say our cost advantage against the
17 legacy airlines, on a unit cost basis, is about 10
18 percent.

19 Q. And do you anticipate being able to maintain a
20 cost advantage relative to your legacy competitors if
21 this merger goes through?

22 MR. DUFFY: Objection, calls for speculation.

23 THE COURT: Oh, no, overruled.

24 Q. You can answer, Mr. Hayes.

25 A. Oh, I'm sorry.

1 No, actually I believe this will help us maintain
2 or improve our cost structure. You know one of the --
3 our team works very hard to maintain that cost
4 advantage, you know, um, the benefits of scale are vast.
5 And by taking the fixed-cost structure, you know that's
6 the sort of the head of this function, and the cost of
7 running the website and all of those things, and
8 spreading the cost of those across a much bigger
9 footprint, um, you know that should allow us at worst to
10 maintain our cost structure, if not improve it. And
11 what we've actually said to our investors is, you know,
12 our goal is for our unit cost structure not to increase
13 as a result of this merger.

14 Q. Well, Mr. Hayes, we just heard testimony about
15 cost dissynergies, do you remember that?

16 A. I do.

17 Q. Okay. And what are "cost dissynergies," can you
18 just remind us what that is?

19 A. Yeah, so, for example, in a lot of areas we pay
20 more than, um, Spirit does for its team members, so
21 pilots are a good example, and that one of the biggest
22 sources of cost dissynergy were us bringing Spirit team
23 members up to JetBlue rates of pay. Spirit also does a
24 lot of outsourcing, we would insource that because we
25 think that integral to sell this model, and that can

1 come, for example, sometimes at an additional cost.

2 Q. Okay, and so are those costs to bring the Spirit
3 experience up to the JetBlue experience, Mr. Hayes?

4 A. Yes.

5 Q. Okay. And those are the costs that you incur
6 associated with this merger, is that right, Mr. Hayes?

7 A. Yes.

8 Q. But in the long run, how do you view JetBlue's
9 cost after this merger?

10 A. Well they'll be some runoff cost to get this
11 merger done, but then even bringing people up to pay
12 rates, JetBlue's pay rates, JetBlue's already at those
13 pay rates anyway. So we can still do that and maintain
14 the JetBlue unit cost trajectory.

15 Q. All right. Mr. Hayes, let's look at another slide
16 which is ending in 230, Bates ending 230.

17 A. (Turns.)

18 Q. Are you there, Mr. Hayes?

19 A. I am.

20 Q. Okay. And the title on this side is "The JetBlue
21 Effect" and then there's two airport codes, which we've
22 become familiar with. Can you explain what these are,
23 Mr. Hayes?

24 A. Yes, "BLS" is the airport code for Boston. And
25 "LGA" is the airport code for La Guardia.

1 Q. Okay. And what is this intended to represent to
2 crew members, Mr. Hayes?

3 A. Well this is an example of the JetBlue Effect in
4 action. So in 2016, um, we were able to, um, um, add
5 Boston, La Guardia, flying. We wanted to do that for a
6 long time. We were actually the beneficiary of a
7 previous slot divestiture at La Guardia when Delta and
8 U.S. Airways went through a slot-swap. And so we were
9 able, as a result of that, to add flights between Boston
10 and La Guardia, which had suffered from very high fares
11 in the past, it was flown by Delta and U.S. Airways at
12 the time. And you can see what happened. We started
13 flying and fares fell by 36 percent and also we
14 stimulated more demand and traffic rose by 41 percent.

15 Q. Well let's focus on that last piece for a second,
16 Mr. Hayes. What does it mean to "stimulate demand,"
17 what does it mean for traffic to go up 41 percent?

18 A. Well, you know, the interesting thing about Boston
19 and La Guardia, it was a very corporate market, load
20 factors actually were quite low historically, and so
21 there was plenty of room to get more people on the
22 airplane so to speak. But the fares were just too high.
23 And so what that did was we lowered the fares and we
24 stimulated the ability for people to travel by air that
25 were either getting there by other means or weren't

1 considering a trip.

2 Q. Okay. Mr. Hayes, let's go to the next slide,
3 which is the slide in Bates number 231.

4 A. (Turns.)

5 Q. And this slide is entitled "The JetBlue Effect,"
6 and we have two more airport codes. And then it says
7 "After JetBlue left."

8 And can you explain what this is representing,
9 Mr. Hayes?

10 A. Yeah, so I was very sad about this one. I
11 actually went to Pittsburgh myself to try to sort of
12 drum up more support for this flight from the community,
13 but we couldn't get it to work. It was deeply
14 unprofitable for us. And so we had to make the decision
15 to pull off it, and we did. And I've been around a long
16 time, but even I was surprised at how quickly the fares
17 went up after we left. So we pulled out the JFK,
18 Pittsburgh route and fares went up by 67 percent, and of
19 course traffic fell because fares had gone up.

20 Q. Okay, Mr. Hayes, let's go to the slide ending in
21 232.

22 A. (Turns.)

23 Q. All right, Mr. Hayes, can you explain what this
24 slide is showing with respect to the JetBlue Effect?

25 A. Yeah, so this example relates to a different, um,

1 a different product. So, you know, JetBlue had spent
2 probably the first 15 years or so of its existence with
3 just a coach product. We had identified just before --
4 around 2012, 2013, an opportunity to launch a new, what
5 I call "business class flatbed" across the country,
6 initially from JFK to LAX. We did that because we saw
7 our competitors were charging really really high fares
8 and also, you know, not great products. And so we
9 rolled out an incredible new product called "Mint," and
10 not only did we roll our flatbeds across the country for
11 people to sleep, if they were doing these trips, but the
12 fares fell in a very significant way. And this example
13 here, when we rolled this route out, we had fares
14 starting at \$599, a significant reduction of 79 percent
15 on what it was like before we started flying it.

16 Q. And what was your competitors' reaction to you
17 rolling out this Mint product, Mr. Hayes?

18 A. They lowered fares and they started putting more
19 and more flatbeds on longer routes across the country.

20 Q. Okay. And, Mr. Hayes, are there other examples of
21 competitors responding to JetBlue's product offerings?

22 A. Oh, yeah, I mean we say it all the time. I mean
23 we just started flights to Europe in 2021, so we're
24 starting to, um, you know bring more benefits to
25 European flying. We see a lot of action when we start

1 flying to other airline's hubs. So I think when we
2 started flying Boston, Minneapolis in 2018, which is a
3 Delta hub, we saw fares come down pretty significantly
4 then. So you know my observation is the JetBlue Effect
5 is alive and well.

6 Q. Okay. Mr. Hayes, do you think the JetBlue Effect
7 has diminished over time?

8 A. I don't, no.

9 Q. Why not?

10 A. Because I still see -- you know I still see what
11 we do when we come into a market and we lower fares and
12 we continue to raise the game. I mean I would
13 immodestly say that JetBlue is probably more responsible
14 for the improvements and enhancements in airline service
15 and product quality that we've seen from anyone else in
16 the last 10 or 15 years. I mean one of our competitors
17 are rolling out free WIFI. You know airlines are
18 putting TVs in the back of seats. So I mean these
19 things are happening, in my opinion, as a direct result
20 of us offering that product.

21 Q. Okay. Mr. Hayes, let's go to the slide ending in
22 Bates number 236.

23 A. (Turns.)

24 Q. And this slide's entitled "Domestic Airline Market
25 Share." And, Mr. Hayes, what are you intending to

1 convey to crew members about market shares in the
2 airline industry?

3 A. Um, what we're trying to do here, and again the
4 context is the first thing they, um, see when they come
5 into the company, and we're just trying to sort of
6 explain to them how we've got to where we've got to and
7 what we have to do going forward to be successful.

8 So, um, you know the Carter administration
9 deregulated our industry back in 1978. I call the
10 period between 1978 and 9-11 as "Airline Industry 1.0,"
11 it was a gold rush, it had all these airlines out there,
12 it was quite fragmented, a lot went bankrupt, there was
13 a lot of consolidation. And, you know, but it didn't
14 really -- it didn't really change, um, you know airlines
15 went, new airlines came, it didn't really change the
16 concentration of power amongst the Big 4. And so we
17 came into around the 2000 timeframe and you had the Big
18 4 at 55 percent.

19 And then we went into Airline Industry 2.0, which
20 is 9-11 right through to covid. And this is where you
21 saw, as you can see from this chart, a lot of the
22 consolidation taking place that has now left us with
23 these large four airlines.

24 So we're just really pointing out to our crew
25 members that, yes, there's four large airlines out

1 there, we have about 5 to 6 percent of the market, and
2 then explain how we compete against those large
3 airlines, which is what I was saying earlier, the sweet
4 spot of low fares and great service.

5 Q. Okay. And, um, Mr. Hayes, you've publicly spoken
6 about your opinion related to the size of these Big 4
7 airlines, haven't you?

8 A. Yes, for many years.

9 Q. And what is your opinion?

10 A. Um, you know they have, um, really -- they've all
11 grown as a result of mergers, every one of those Big 4
12 airlines has grown as a result of mergers, and they have
13 a very protected market. You know they are very
14 powerful, they've got megahubs, they've get lots of
15 airplanes. And, you know, what I have talked a lot
16 about over the years, with the case of United, Delta,
17 and American, they also have international joint venture
18 partners where the government has approved partnerships
19 with the international airlines where they could make
20 schedules and organize set pricing. And so, you know,
21 it is a very tall order to compete with them.

22 Q. Okay, and we'll come back to some of that in a
23 bit, Mr. Hayes.

24 A. Okay.

25 Q. So let's go to Slide 253, Bates number ending in

1 253.

2 A. (Turns.)

3 Q. And this slide's entitled "Our Direction," and it
4 says "Where we're Going." And can you describe what
5 this is intended to convey, Mr. Hayes?

6 A. Yes, this is really intended to convey to our crew
7 members that we're more than just an airline, you know
8 we are a travel company or a travel partner. And what
9 do I mean by that? I mean that we have a loyalty
10 program that our customers can be part of which conveys
11 benefits, you know, outside of just JetBlue. We have a
12 JetBlue credit card that you can get benefits by
13 spending money on. And we also have a vacations company
14 that can sell you JetBlue vacations and car hires and
15 insurance and all those other things as well.

16 Q. Okay. And those assets that you just described,
17 loyalty, travel products, is that part of the airline
18 business today?

19 A. It is part of -- very much a part of the airline
20 business today.

21 Q. All right. And why is it important for JetBlue to
22 be a travel partner across those different facets of the
23 business, Mr. Hayes?

24 A. Well, first of all, you know it's about giving
25 people a reason to fly JetBlue, above our competitors,

1 and that we can do other things for you. But also
2 secondly, um, loyalty particularly is a huge source of
3 revenue and, um, profit growth for these legacy
4 airlines, and really allows them to cross-subsidize
5 their airline operations because of all the profits
6 they're making from loyalty.

7 Q. All right. Mr. Hayes, let's go to the slide
8 ending in 257.

9 A. (Turns.)

10 Q. And this refers to "The JetBlue Culture." Can you
11 please provide for us your understanding of the JetBlue
12 culture?

13 A. Yeah, so, um, we're very proud of our culture.
14 You know we think that one of the ways that we can
15 compete and be successful is just about being an
16 incredible place to work. And we know ours is a very
17 challenging industry and we want people to be excited
18 about the difference they can make by working JetBlue.
19 So we do a number of things that I believe are unique or
20 were unique and have now been copied by others in the
21 industry to create this great culture.

22 Q. And if this transaction were to go through, would
23 JetBlue's culture change, Mr. Hayes?

24 A. No, and in fact all the benefits that we provide
25 would now be available to Spirit team members. Let me

1 give you an example. If you come and work at JetBlue in
2 any role, you could be working in Boston on the ramp as
3 part of our ground operations team, you work for us for
4 two years, you want to become a pilot? We will train
5 you to become a pilot. All of those -- and also the
6 other thing JetBlue is very proud of in our history is
7 we've never furloughed a single crew member. We've
8 never sent a notice to furlough a single crew member.
9 So all the Spirit team members will also benefit from
10 that no-furlough commitment that we provide.

11 Q. Okay, let's go to Slide 260, Mr. Hayes, Bates
12 number ending 260.

13 A. (Turns.)

14 Q. All right. Mr. Hayes, we've heard testimony about
15 JetBlue's focus cities. Can you just remind us what
16 JetBlue's focus cities are?

17 A. Yes, our focus cities, our largest two are New
18 York JFK and Boston, and then we have, um, what are
19 called two medium-sized focus cities in Fort Lauderdale
20 and Orlando. And then we have two smaller focus cities,
21 LAX and San Juan.

22 Q. Okay. And the title of this slide says "Build Out
23 Focus Cities to Establish a Position of Strength." Do
24 you see that?

25 A. Yes.

1 Q. And what does that mean?

2 A. Well what it means is that the size of our focus
3 cities are so much smaller than most airlines have. You
4 know I actually think from memory, I think about in
5 passengers, JFK doesn't even feature in the top 20 of,
6 you know, airline hubs or focus cities in the U.S., yet
7 it's our largest. And so what it's saying to our crew
8 members is "Look, we have to focus on growing in the
9 places that we have today and so we need to get to a
10 point where we can offer customers enough places to
11 fly," and we call it "relevance." And what "relevance"
12 means is if I live in Boston or I live in Orlando, how
13 many of the places that people want to fly am I living?
14 You know can I fly and can I serve? And so the idea is
15 that we would add flights to provide a relevant network
16 for those customers.

17 Q. All right. Okay. And is "relevance" a standard
18 term in the airline industry?

19 A. Yes, I think most people would know what that
20 means.

21 Q. Okay. And, um, there's a bullet point about --
22 let's see, it's the fourth bullet point on this slide,
23 it says there's a reference point. Do you see that?

24 A. Yes.

25 Q. Okay. And what is this reference point that is

1 being described on this slide?

2 A. Well you know I think one of the things that
3 struck me about JetBlue when I joined is, yes, even in
4 Boston where, you know, we have a significant presence,
5 we're about 30 percent of the flights at the airport or
6 the seats at the airport, and then you compare that to
7 some of these larger airlines, like American Airlines
8 which has over 80 percent of the flights in Dallas, or
9 Charlotte, about 85 percent of the flights in Charlotte,
10 or Delta, about 75 percent of the flights in Atlanta.
11 And so, you know, we're just pointing out that we're
12 never going to get to that size, nor do we want to,
13 because the legacies have a different business model,
14 but we do need to build a bigger presence in these 6
15 focus cities to be competitive.

16 Q. Okay. And why will you never get to that level
17 that you just described, Mr. Hayes?

18 A. Well we're what's called a "point-to-point
19 airline," So most of what we are flying is people from A
20 to B, whereas most of the customers flying on a legacy
21 airline, they're going from A to B via C, they're
22 traveling by one of their hubs. So that's called a
23 "hub-and-spoke model." Whereas a "point-to-point
24 airline," we're more focused on people going from A to
25 B. So we don't have to fly to all of the smaller

1 connecting markets to connect people somewhere else.

2 Q. Okay, and if this transaction were to go through,
3 would that change your focus on a point-to-point model?

4 A. No, we would remain a point-to-point airline.

5 Q. Okay. Let's look quickly, if we could, at the
6 page ending in 261, and there's a bullet point at the
7 end.

8 A. (Turns.)

9 Q. And this talks about what JetBlue would be able to
10 do with increased market share in its focus cities. And
11 can you explain what this describes, Mr. Hayes?

12 A. Yes. You know I think one of the reasons that you
13 want to, um, have a bigger presence in a focus city is
14 to -- you know loyalty programs, I think most Americans
15 are in a loyalty program, and these things are massive.
16 I mean I heard a comment -- the Delta CEO I believe made
17 a comment this summer that, you know, nearly 1 percent
18 of U.S. GDP is being spent on the Delta AMEX credit
19 card. You know these things are vast. And clearly if
20 you are in an airline's loyalty program, I think you
21 first check their flights to see "Do they fly where I
22 want to go?"

23 And so we need to get our loyalty program to --
24 you know we've made good progress, but we need it to be
25 stronger. We need to generate more revenue from our

1 co-brand card because the legacies' lines have a massive
2 advantage which they can then use to almost subsidize
3 the rest of the operating airline. And then also we
4 want to sell more vacations for our JetBlue travel
5 products and company.

6 Q. Okay. And if this transaction were allowed, could
7 you achieve, in your opinion, Mr. Hayes, some of the
8 benefits that you just described?

9 A. Without doubt. I mean being a more national, um,
10 having a more national presence is going to be very
11 important for all of these things.

12 Q. Okay. Mr. Hayes, you can put that document aside.
13 All right, I want to change topics. And I believe
14 you testified on Friday that you're very proud of the
15 JetBlue product, Mr. Hayes?

16 A. Yes.

17 Q. Okay. And let's talk about that product. What
18 are the distinguishing features of JetBlue's product?

19 A. So as I said earlier, you know we focus on the
20 three things of comfort, service, and entertainment. So
21 for comfort, it's about having the most leg room in
22 coach, so that customers have more leg room. It's also
23 about having a wider seat. So we have, on some of our
24 airplanes, the widest seat in coach. That's comfort.

25 Entertainment. You know we offer, um, have

1 offered free live TV in the back of seats since the
2 early days, um, and for about 10 years we've offered
3 free WIFI, we were the first airline in the U.S. to
4 offer free WIFI. And we still are the only ones that
5 have that on most of our flights, although Delta has
6 been rolling it out.

7 And then service. You know we have amazing crew
8 members who go above and beyond every day. And then
9 just free drinks and snacks, which sound like a small
10 thing, but are really important to people on a three- or
11 four-hour flight.

12 Q. Okay, and let's talk about the leg room. And if
13 we could, let's show Exhibit 627, which are some photos
14 that have already been admitted into evidence.

15 A. (Looks.)

16 Q. And what are we seeing in these photos, Mr. Hayes?

17 A. This is what we call a "triple," so it's a block of
18 three seats. It's the JetBlue, the current JetBlue
19 coach seat. It's manufactured from a company called
20 Collins, which is owned by Raytheon, and it's called the
21 "Meridian of Seats."

22 Q. Okay. And are these Meridian seats installed on
23 all of JetBlue's aircrafts?

24 A. No, they, um -- we've been installing them for the
25 last couple of years and they're being installed on

1 future deliveries. I would say, um, there's -- it's
2 what I call a "sister seat," called the, um, "Collins
3 Pinnacle" seat, which is installed on most of the rest
4 of our airplanes, and that's very similar to this seat
5 as well.

6 Q. Okay. And do you know, um, from these pictures,
7 where these seats are located physically, Mr. Hayes?

8 A. Yes, I do.

9 Q. And where are they?

10 A. They're situated just across the road.

11 Q. Okay. And did you have a chance to look at these
12 seats?

13 A. I had a chance to look at them, sit in them, and
14 measure them.

15 Q. Okay. And do these photos accurately represent
16 the seats that you had an opportunity to sit in and
17 measure and those other things you described?

18 A. Yes.

19 Q. Okay. And are you familiar with the standard
20 measurements on these seats, Mr. Hayes?

21 A. I am.

22 Q. All right.

23 MR. SHORES: Let's see, Mr. McLeod, would you pull
24 up Hayes Demonstrative A, please, sir.

25 Q. Let's start on the left-hand side, Mr. Hayes. Do

1 you see where it says 32 inches at the top and the
2 bottom?

3 A. Yes.

4 Q. What does that represent?

5 A. Um, 32 inches is, um, commonly known as seat --
6 it's commonly called "seat pitch." What it really means
7 is how far one point of the seat is in front or behind
8 the same corresponding point on the seat in front. So
9 in this case, um, we have 32 inches between points --
10 the same points in those two seats.

11 Q. And is this a standard seat pitch in the core of
12 most JetBlue planes?

13 A. Yes, we have 32 inches. We do go up to 33 or 34
14 inches on certain fleet types. But I would say 32 is
15 the, you know, what you would find most frequently.

16 Q. Okay. And if we could go to Hayes Demonstrative
17 B, please.

18 And do you monitor the seat pitch of your
19 competitors, Mr. Hayes?

20 A. Well I monitor and I experience it, when I fly
21 them.

22 Q. And what is JetBlue's standard seat pitch as
23 compared to your competitors?

24 A. Um, we offer 32 inches, which is, um, between 1 to
25 4 inches above our competitors.

1 Q. Okay. And how does it compare to -- your standard
2 seat pitch compare to the standard seat pitch of Spirit?

3 A. The standard seat pitch of Spirit is 28 inches.

4 Q. Okay. All right, let's go back to Hayes

5 Demonstrative A. (On screen.) All right.

6 And, Mr. Hayes, do you see that below the 32
7 inches there's an 18 inch above the seat?

8 A. Yes.

9 Q. And what does that represent?

10 A. Um, the two on the left-hand side?

11 Q. Yes, I apologize, I'm on the left-hand side.

12 A. There's two 18 inches on that, sir.

13 Q. Yes.

14 A. That is the, um -- that is the depth of the seat
15 cushion that you're sitting on, so the 18 inches.
16 Because we offer more leg room, we can have a slightly
17 longer seat cushion. And it just gives a little bit
18 more comfort in the seat.

19 Q. Okay. And let's go to the right-hand side, since
20 you mentioned that Mr. Hayes, the 18 inches between the
21 arm rest. What does that represent?

22 A. That is the width of the seat. So, you know,
23 there's a lot of focus on the seat pitch, because that
24 is something that I think a lot of people are frustrated
25 over the years, that airlines have been taking leg room

1 away, but I think it's also important to, um, think
2 about, um, seat width. And the Meridian seat actually
3 is one of the widest seats on the market. And we've
4 been able to get an additional inch of width for
5 customers as a result of this new seat design.

6 Q. Okay. And if we could, let's go to Hayes
7 Demonstrative C.

8 And, Mr. Hayes, I don't want to belabor this,
9 because I think you've already testified, but on the
10 right-hand side, is that the width difference you were
11 just speaking of, of the JetBlue standard seat as
12 compared to the Spirit standard seat?

13 A. Yes.

14 Q. All right. And, Mr. Hayes, you mentioned "seat
15 back entertainment." Can we go to Demonstrative D. (On
16 screen.)

17 And can you describe for us, Mr. Hayes, the seat
18 back entertainment offered on JetBlue flights?

19 A. Yes, so we offer, um -- first of all, we offer
20 free live TV, so you can, depending on the airplane
21 you're on, get up to 100 channels of free live TV. And
22 then the other thing that we offer is, you know, access
23 to recorded TV shows and movies as well, and that's
24 available to any customer that wants it free of charge.

25 Q. And how does that compare to your Big 4

1 competitors?

2 A. Well American doesn't have seats, TVs in the back
3 of the seats. United -- Delta does on a large number of
4 their flights. And United has announced they're rolling
5 out TVs in the back of seats. And Southwest does not
6 offer it.

7 Q. Okay. And how does that compare to Spirit?

8 A. Spirit does not offer free live TV -- or doesn't
9 have a screen in the back of the seat. I'm sorry.

10 Q. Okay. And what about WIFI, you mentioned WIFI.
11 JetBlue offers free WIFI on its seats, Mr. Hayes?

12 A. Yes, I'm very proud, we were, I believe the first
13 airline in the world back in 2013 to offer free
14 high-speed WIFI on our domestic flights.

15 Q. And how does that compare to your Big 4
16 competitors?

17 A. Well they all offer WIFI, but Southwest, United,
18 American, charge most customers for it. And Delta, I
19 believe in response to us, is rolling out free WIFI as
20 well, although you do have to be a member of their
21 loyalty program to qualify for it.

22 Q. And does Spirit offer free WIFI?

23 A. Spirit does not offer free WIFI.

24 Q. Okay. And let's talk about USB charging ports,
25 are those available to customers of JetBlue?

1 A. We offer it on most of our aircraft, but not all
2 of them.

3 Q. Okay. And what about your Big 4 competitors, do
4 they offer that?

5 A. Again it's a mix, but not across the board, no.

6 Q. And what about Spirit?

7 A. Spirit does not offer free USB chargers.

8 Q. And what about brand name snacks and drinks, you
9 mentioned that's offered on JetBlue?

10 A. Yeah, so we offer free nonalcoholic drinks,
11 whether it's Dunkin Donuts has been a coffee partner for
12 a while, Pepsi is our beverage partner, and we also
13 offer some brand name snacks like Cheez-its.

14 Q. Okay. And what about your big four competitors,
15 do they offer -- have a similar offering?

16 A. Well they do offer free, um, nonalcoholic drinks,
17 um, but I think our snacks are much better.

18 Q. Okay. And what about Spirit?

19 A. Spirit doesn't offer free drinks or snacks for the
20 majority of its customers.

21 Q. Okay. And, Mr. Hayes, just stepping back. Why
22 does JetBlue provide all of these product offerings to
23 its customers?

24 A. Because it's what people want. I mean you know
25 you go to a budget hotel, you know you don't expect to

1 pay for WIFI, pay for TV, sleep on a bed that's, you
2 know, 1 foot less long than you are. I mean I think
3 that these are things that people want. And secondly,
4 this is how we compete against the legacy airlines, we
5 don't have all the natural advantages that they have, so
6 we have to give people what they want when they're
7 flying.

8 MR. SHORES: Your Honor, I'm about to move to a
9 different subject, but I'm also cognizant of the time,
10 if this is a good time to take a break?

11 THE COURT: Well it's a bit early, so why don't
12 you go ahead.

13 MR. SHORES: Okay.

14 Q. Mr. Hayes, let's talk about JetBlue's tracking of
15 its brand. Does JetBlue track its brand?

16 A. We do.

17 Q. Okay. And why do you track your brand?

18 A. Um, because we want to make sure that we remain a
19 really strong brand for customers so we're top of mind
20 when they're looking to book their flights.

21 Q. Okay.

22 MR. SHORES: Let's pull up Exhibit 613, which is
23 in evidence. (On screen.)

24 Q. And this is entitled "JetBlue Lender
25 Presentation." Do you see that, Mr. Hayes?

1 A. Yes.

2 Q. And what is a "lender presentation"?

3 A. Well this was when we were trying to raise money
4 during covid. So this was a presentation to lenders to
5 give them a rationale why they should lend us money.

6 Q. Okay. So let's go to 565, Bates ending in 565.

7 A. (Turns.)

8 Q. And on the right-hand side there's "Customer
9 Experience Studies." Do you see that, Mr. Hayes?

10 A. I do.

11 Q. Okay. And then there's a series of five different
12 columns there. Can you just generally describe what
13 these customer experience studies represent?

14 A. Yeah, they're really just different looks at, um,
15 you know the, um, how we compare with these other
16 airlines. So the JetBlue brand study, the first choice,
17 which is the first column, that is sort of an internal,
18 um, survey that we do using a company that we use to
19 track how we are doing against everyone else.

20 You know, JD Power, Number 3 and Number 4, um, are
21 more well known, they are external validation, if you
22 like. JD Power is a company that measures customer
23 satisfaction across different sectors. And then you've
24 got other companies like Forrester that also do that.

25 So I'm not here claiming we win every award that's

1 out there, but if we don't win it, we're very close.

2 Q. Okay. And generally who do you find JetBlue
3 competes with for winning these customer service awards?

4 A. I would say the three airlines that most
5 prominently feature are JetBlue, Delta, and Southwest.

6 Q. Okay. And do you typically compete with Spirit
7 for those same customer experience awards?

8 A. Um, no, Spirit does not normally feature highly in
9 these rewards.

10 Q. All right. Mr. Hayes, you can put that aside.

11 Mr. Hayes, I want to talk to you about competition
12 in the airline industry.

13 A. Okay.

14 Q. From a geographic perspective, how do you think
15 about competition in the airline industry?

16 A. Well, um, you know first and foremost, we're an
17 airline that is registered to operate in the United
18 States and so our market is the U.S., you know we build
19 a national brand, we have a national network, we have a
20 national loyalty program, we fly the same product across
21 the whole country. You know we have one workforce with
22 one set of labor agreements across the country. So --
23 you know first and foremost -- and we have a network.
24 So first and foremost, you know that is our market. We
25 couldn't tomorrow go to Canada and operate there, you

1 know, we are a U.S. registered airline.

2 Q. Okay, so you mentioned some national features. Do
3 you also compete at the city level?

4 A. Yeah, so once you've sort of said "Okay, we're a
5 U.S. Carrier," you have to sort of then say, "Well,
6 where are we going to, you know, feature our main base
7 of operations?" So in our case that's where the focus
8 cities come from. So within that national footprint, 6
9 markets that we want to invest in. And those are where
10 we sort of base our planes, we have maintenance spaces,
11 and we have crew member bases.

12 Q. Okay. And are you competing to attract customers
13 to JetBlue within particular cities?

14 A. Um, yes, for sure. So obviously if you live in
15 Boston, we want you to have JetBlue as your first
16 choice.

17 Q. All right. And do you compete against other
18 airlines on individual routes?

19 A. Yes, so I mean let's use Boston as an example. So
20 we're a U.S. Based airline, it's a national airline, a
21 national market, we have Boston as a significant base of
22 operations, and then we fly different routes in and out
23 of Boston. And, you know, some of those routes are
24 routes we fly all the time and some come and go
25 depending on the, um, depending on the market.

1 Q. Okay. Let's talk about who you compete with,
2 Mr. Hayes, and you've mentioned the Big 4 previously.

3 A. Uh-huh.

4 Q. From your perspective, Mr. Hayes, on an organic
5 basis, without this transaction, what would it take for
6 JetBlue to catch up to the scale of the Big 4 airlines?

7 A. I mean we'd never get there because they would
8 continue to grow as well. I mean we've spent 25 years
9 now carving out 5 percent. You know we are viewed as
10 one of the few success stories in this industry, post-
11 deregulation, and most of that growth was spent in a
12 time when the legacies were going through bankruptcies
13 and shrinking and consolidating, and that's not the
14 industry that we face today. So you'd never ever get to
15 the size that they are based on organic growth. And by
16 the way, let's recall that they didn't get there through
17 organic growth either, they got through there through
18 mergers and acquisitions.

19 Q. Okay. And, Mr. Hayes, are you familiar generally
20 with the fleet sizes of your competitors?

21 A. Oh, yes.

22 Q. Okay. And let's, if we can, pull up Hayes's
23 Demonstrative E, please.

24 A. (Turns.)

25 Q. Mr. Hayes, how do you track the fleet sizes of

1 your competitors?

2 A. Um, I mean there's different ways of doing it.
3 They've often disclosed it themselves. There's
4 companies like LAG that track schedules and fleets. Or
5 you can go on planeswatters.com and some of these other
6 websites and see it there. So it's pretty easy to keep
7 track of it.

8 Q. Okay. And does this accurately reflect the fleet
9 sizes, at the end of 2022, of your competitors based on
10 public securities filings?

11 A. Yes, that looks right.

12 Q. Okay. And can you just describe for the record
13 the size of the relative fleets of the various airlines
14 listed here?

15 A. Um, yes. So American is, um, you know 1461
16 airplanes. Um, that's a mixture of mainline, so large
17 airplanes, and also, you know, some of their -- their
18 regional, smaller regional jets. United is catching up
19 quickly, they're at 1338 aircraft. Delta, 1254.
20 Southwest at 770 planes. And then JetBlue is about 290.
21 And Spirit 190. So as of that time period.

22 Q. Okay. And how does the fleet size of these
23 airlines impact your network breathe?

24 A. Well, um, when you're -- these legacy airlines at
25 that size have such massive advantages. They have

1 Fortress Hubs. And what does a "Fortress Hub" mean? A
2 "Fortress Hub" is where you're flying 70, 80 flights a
3 day and you have 60, 70, 80 percent market share.

4 And I think the other concern that I have as a
5 smaller airline is that they can really make life
6 difficult for you. I mean one of these airlines could
7 easily take 20 to 30 airplanes, build a base of
8 operations in an airport that JetBlue flies today and
9 they wouldn't even notice the impact, and it could have
10 a very material impact on us. So just the power that
11 this fleet size gives these large airlines is huge.

12 Q. And has that size impacted JetBlue's ability to
13 compete effectively in the market?

14 A. Yes, for sure.

15 Q. In what ways?

16 A. Again, just the -- you know the natural, um,
17 advantages they have in size, their ability to, you
18 know, leverage their loyalty program, our ability to
19 grow. I mean we would love to be bigger in New York,
20 but we've been unable to get bigger because of sort of
21 the dominance that Delta and United have. And just
22 their ability really to, um, put smaller airlines under
23 pressure by deploying resources, if that's what they
24 need to do, into your markets.

25 Q. Okay. All right. Mr. Hayes, I'd like to turn to

1 the reason we're here today, which is the transaction
2 with Spirit.

3 And when did JetBlue first consider trying to
4 acquire Spirit?

5 A. Um, we first looked at it around the 2017 time
6 period.

7 Q. And was JetBlue considering any transactions prior
8 to that time?

9 A. Yeah, I mean when I got the job in 2015 as CEO, I
10 was very concerned about the growth of these legacy
11 airlines. I mean to be honest, sort of it had been
12 relatively easy in that first decade of the century
13 because these airlines were going through bankruptcy,
14 that businesses weren't performing, and because they
15 consolidated and got fit, this sort of emerging fear of
16 just their sheer size and scowl and the ability for the
17 rest of the industry to succeed.

18 And so we actually, um, took part in an
19 acquisition, an attempted acquisition of Virgin America
20 back in the 2015, 2016 time period. We were
21 unsuccessful. They were acquired by Alaska Airlines.
22 But the need for us to continue to look at how can we
23 grow more quickly and organically, that never went away.

24 Q. Okay. And why were you considering, um, the
25 Virgin acquisition at that time, Mr. Hayes?

1 A. Well, Virgin America had a West Coast presence,
2 um, you know they had a presence in LAX and San
3 Francisco. And again for the same reason we are looking
4 at this transaction, we wanted to build a more national
5 presence.

6 Q. Okay, let's look at Exhibit 1616 in your binder,
7 which is in evidence, Mr. Hayes.

8 A. (Turns.) Yes, I have it. Thank you.

9 Q. All right. And you'll see this is an e-mail with
10 an attachment that's entitled "Henri Special Committee
11 October 23, 2017 Final." Do you see that?

12 A. Yes, I do.

13 Q. And what is "Henri"?

14 A. "Henri" was the code name we used for this
15 project, um, in terms of looking at potential merger
16 partners for JetBlue.

17 Q. Okay. And let's look at a page in the -- in 863.

18 A. (Turns.)

19 Q. All right, Mr. Hayes, is this an Executive Summary
20 related to Henri?

21 A. Yes.

22 Q. And I want to go down to the fourth line here,
23 starting each option. Do you see that line?

24 A. I do.

25 Q. And what is this, um -- can you just read this

1 line for the Court?

2 THE COURT: Well, I can read.

3 MR. SHORES: (Laughs.) Okay.

4 Q. What is JetBlue intending -- or what was JetBlue's
5 purpose related to this transaction in 2017?

6 A. Well, you know, Virgin America at this point in
7 time was being ingested by Alaska Airlines, and so it
8 really was a look at the smaller airlines left, what
9 were potentially the best options for JetBlue. We
10 narrowed it down to two airlines. "Shop" is the code
11 word for Spirit. And then another airline here, which
12 has been redacted.

13 Q. Okay. And it says "Build a stronger platform to
14 compete against the Big 4." Was that the purpose of
15 considering an acquisition at this time, Mr. Hayes?

16 A. Yes, as I stated earlier, you know I felt that
17 consolidation amongst the smaller airlines was in some
18 way inevitable in order to compete against the Big 4
19 airlines and, um, you know that was the rationale then
20 as it is now.

21 Q. Okay. And there's a reference up here to
22 "Possibility of further industry consolidation would
23 have implications for JetBlue." Do you see that?

24 A. Yes.

25 Q. What is that, Mr. Hayes?

1 A. Well again the timeframe was Alaska Airlines had
2 just bought Virgin America, there's lots of people sort
3 of out there thinking "What's going to happen next?"
4 Everyone can see the growth of the legacy airlines. And
5 so it really was how do we put JetBlue in the best
6 possible, um -- you know of the remaining consolidation
7 that could take place amongst the smaller airlines, how
8 do we put JetBlue in the best possible position to do
9 something that was right for JetBlue?

10 Q. Okay. And let's look at the slide ending in Bates
11 number 865.

12 A. (Turns.)

13 Q. And it has a rationale for each transaction. Do
14 you see that at the top?

15 A. Yes.

16 Q. Okay. And at the bottom it says, "Common benefits
17 for both include increased presence, scale, and customer
18 base." Do you see that?

19 A. Yes.

20 Q. And what does that mean?

21 A. Well again, um, "Presence" was about having, um,
22 you know more JetBlue flights in different parts of the
23 country, I'd say that's now with -- that's the more
24 national, to build the more national challenger brand.
25 "Scale," this talks about just trying to get the

1 benefits of more scale, um, because there's significant
2 scale benefits in this industry. And also building a
3 broader customer base, you know a more national customer
4 base.

5 Q. And did JetBlue pursue a transaction of Spirit at
6 this time in 2017?

7 A. No, we did not.

8 Q. Why not?

9 A. There were really two reasons. First of all, the
10 affordability of a transaction, Spirit's share price was
11 significantly higher than it was when we looked at it
12 this time. And secondly, um, Alaska Airlines had paid a
13 significant premium for Virgin America. I think largely
14 because we were also bidding for it. And you know I
15 think we had a concern that the market would expect a
16 similar premium.

17 So you had a much higher share price and a high
18 premium and it just meant it was too -- it was
19 unaffordable at that point.

20 Q. Okay. And did JetBlue, after this timeframe,
21 again consider a transaction with Spirit?

22 A. Yes, um, so this was around the 2017 timeline and
23 then we looked to it again around the 2019 period.

24 Q. Okay, let's look at Exhibit 617.

25 THE COURT: Mr. Shores, I'm ready to stop whenever

1 you are now.

2 MR. SHORES: Well then I'm ready too.

3 THE COURT: Very well.

4 We'll stop taking testimony at this time. We'll
5 resume at 20 minutes after 11:00. We'll stand in
6 recess.

7 (Recess, 10:50 a.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Monday, November 6,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-06-23

RICHARD H. ROMANOW Date